



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0885]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker

101, New Orleans, LA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the heavy load carrier vessel ZHEN HUA 23 as she transits the Lower Mississippi River between the Southwest Pass Sea Buoy and Port of New Orleans Terminal, mile marker 101. The moving safety zone extends from bank to bank encompassing one-mile ahead and one-mile astern of the vessel. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River and the limited maneuverability and visibility of the vessel.

DATES: This rule is effective from December 5, 2021 through December 15, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0885 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2246, email William.A.Stewart@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP	Above Head of Passes
BHP	Below Head of Passes
BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	Federal Register
LMR	Lower Mississippi River
LNM	Local Notice to Mariners
MM	Mile Marker
NPRM	Notice of proposed rulemaking
MSIB	Marine Safety Information Bulletin
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the expected arrival of the vessel is less than two weeks away. It is impracticable to publish an NPRM because we must establish this safety zone prior to the vessel’s arrival on December 5, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with potential safety hazards associated with congested maritime traffic on the Lower Mississippi River and the limited maneuverability and visibility of the heavy load carrier vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New Orleans (COTP) has determined that temporary moving safety zone is necessary to provide for the safety of persons, vessels, and the marine environment during the transit of the heavy load carrier vessel ZHEN HUA 23 to the Port of New Orleans with limited maneuverability and visibility. Potential hazards include risk of injury if normal vessel traffic were to interfere with the vessel's movement. The transit is scheduled to take place from 6 a.m. on December 5, 2021 through 8 p.m. on December 15, 2021, in the navigable waters of the Lower Mississippi River. This rule is needed to protect persons, vessels, and the marine environment from hazards associated with the vessel's limited maneuverability and visibility in the navigable waters within the safety zone while the vessel transits.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone from December 5, 2021 through December 15, 2021. The safety zone will cover all navigable waters around the heavy load carrier vessel ZHEN HUA 23 as she transits the Lower Mississippi River between the Southwest Pass Sea Buoy and Port of New Orleans Terminal, MM 101. The moving safety zone extends from bank to bank encompassing one-mile ahead and one-mile astern of the vessel. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River and the limited maneuverability and visibility of the vessel. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on minimal impacts on routine navigation expected. The temporary moving safety zone will not interfere with a vessel's ability to make passing and overtaking arrangements. Routine navigation around and near the proposed safety zone will not be impacted. The temporary moving safety zone is intended to enable early notification of passing or overtaking arrangements, providing additional time and opportunity to negotiate navigational arrangements and to maneuver without causing delay in transit for both the heavy load carrier and the other vessels operating in the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary moving safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary moving safety zone one mile ahead, one mile astern and bank to bank of heavy load carrier vessel ZHEN HUA 23 on the LMR, lasting ten days. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received

without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Add § 165.T08-0885 to read as follows:

§ 165.T08-0885 Safety Zone; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 101, New Orleans, LA.

(a) *Location.* The following area is a safety zone: all navigable waters within the Lower Mississippi River and Southwest Pass, around heavy lift carrier vessel ZHEN HUA 23 transiting between the Southwest Pass Entrance Lighted Buoy “SW”, at approximate position 28°52’42” N, 89°25’54” W [NAD 83] and Port of New Orleans at approximate LMR MM 101 in New Orleans, Louisiana. The temporary moving safety zone extends bank to bank, encompassing all waters one-mile ahead and one-mile astern of the vessel. The zone remains in effect during the entire transit of the vessel.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New Orleans (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative, except as provided for in paragraph (c)(3) of this section..

(2) For this section the Pilot directing the movement of the heavy load carrier vessel ZHEN HUA 23 under the authority of the master has the authority to allow other vessels to enter the safety zone when necessary.

(3) All vessels are prohibited from entering this safety zone unless authorized as follows:

(i) Vessels that have made suitable passing or overtaking arrangements with the pilot onboard the vessel ZHEN HUA 23 may enter into this safety zone in accordance with those agreed upon arrangements.

(ii) Moored vessels or vessels anchored in a designated anchorage area may remain in their current moored or anchored position while the vessel ZHEN HUA 23 transits the area.

(iii) Barge Fleets or vessels working a fleet may continue their current operations while the vessel ZHEN HUA 23 transits the area.

(4) Vessels requiring a deviation from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365-2545.

(d) *Enforcement period.* This section will be enforced from 6 a.m. on December 5, 2021 through 8 p.m. on December 15, 2021.

(e) ***Information broadcasts.*** The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNM)s, and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: November 29, 2021

W. E. Watson,
Captain, U.S. Coast Guard,
Captain of the Port Sector New Orleans

[FR Doc. 2021-26281 Filed: 12/2/2021 8:45 am; Publication Date: 12/3/2021]